



POLICE DEPARTMENT

September 9, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Louis Cardenas
Tax Registry No. 936303
049 Precinct
Disciplinary Case Nos. 2014-11801

Police Officer Robert Santangelo
Tax Registry No. 920806
049 Precinct
Disciplinary Case No. 2014-11800

The above-named members of the Department appeared before me on May 20, 2015, charged with the following:

Disciplinary Case No. 2014-11801

I. Said Police Officer Louis Cardenas, on or about June 26, 2013, at approximately 2239 hours, while assigned to the 49th Precinct and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, page 1, paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

Disciplinary Case No. 2014-11800

I. Said Police Officer Robert Santangelo, on or about June 26, 2013, at approximately 2239 hours, while assigned to the 49th Precinct and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, page 1, paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

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The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel, Esq. Respondents Cardenas and Santangelo were represented by John Tynan, Esq. of Worth, Longworth & London, LLP. Respondents through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Jorge Pacheco as a witness and offered a transcript of a CCRB interview with [REDACTED] conducted on July 26, 2013. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2014-11801

Respondent Cardenas is found Not Guilty.

Disciplinary Case No. 2014-11800

Respondent Santangelo is found Not Guilty.

FINDINGS AND ANALYSIS

This case arises out of a CCRB complaint following Respondents' accompanying an individual to his former apartment to retrieve his belongings. Respondents stand charged with entering the apartment of Jorge Pacheco without sufficient legal authority. Having carefully considered the evidence and testimony, this tribunal finds Respondents Not Guilty of the instant charges.

The following facts are not in dispute. Jorge Pacheco resides at [REDACTED]
[REDACTED] In 2012, he allowed his friend, Person A, to stay with him for several months. (Tr. 10-11) After approximately four months, Person A left the apartment leaving behind personal belongings that included clothing and tables. The

relationship between Person A and Pacheco deteriorated following this move, resulting in litigation over a joint business venture. (Tr. 31)

On the evening of June 26, 2013, at approximately 2100 hours, Person A returned to the apartment to retrieve his belongings. Pacheco told him he couldn't enter his home without a "police officer or some kind of a legal order." (Tr. 12, 32) Person A returned to the apartment with Respondents, Police Officers Robert Santangelo and Louis Cardenas at about midnight. (Tr. 13) Respondent Santangelo accompanied Person A inside the apartment to retrieve his clothes, two tables and other personal effects while Respondent Cardenas remained at the door, holding it open. Pacheco objected to the officers being inside the residence. (Tr. 20, 53-55, Tr. 85-87) After about ten to fifteen minutes, Person A completed the move and left the premises along with Respondents.

The following is a summary of the relevant testimony presented by CCRB. At trial, Pacheco testified that because he was expecting Person A to return, he had left his apartment door halfway open and had Person A's clothing packed in the kitchen. (Tr. 14-15) He stated that having been watching from the window, he buzzed the officers and Person A in when they arrived, fully opened the door and told the officers in English they needed an order to enter his home. (Tr. 14-15, 26) He asserted that Respondent Santangelo told him that no paper was needed to go into the apartment. (Tr. 19) He said that Santangelo then "went in [to the apartment] quickly ..." and that he "came in like strong or tough." (Tr. 17)

Pacheco recalled that Person A had a white, letter-size paper that listed his belongings. (Tr. 19, 35). He believed that the paper was not official, because it was

handwritten and bore no signatures, but also acquiesced that he did not inspect the paper or get a good look at it. (Tr. 36-37)

The CCRB also offered the hearsay statement of Mr. Pacheco's relative [REDACTED]. [REDACTED] He told CCRB that his uncle opened the door for the officers, holding it with his arm, and that Respondents and Person A ducked under his arm and went inside. He acknowledged that Person A "presented" a paper but contended that Respondents did not present any documentation or paperwork. (CCRB Ex. 1B at 17-18)

At trial Respondent Santangelo explained that following roll call, the desk sergeant, Sergeant Tracy-Donato, informed him that he and Cardenas needed to take a waiting complainant to [REDACTED] to retrieve his clothing. (Tr. 45) He recalled that she showed them a court order on official letterhead bearing a raised seal with the items to be retrieved handwritten in the body. (Tr. 46, 48, 59) Respondent Santangelo asserted that the order provided that police were permitted to "escort " Person A to the apartment to safely retrieve his property, although he did not recall the judge's name or the date of issuance. (Tr. 65) He noted that he never touched the order himself as it was the property of Person A and he did not want to "lose it in the transfer." (Tr. 51, 57) He did not photocopy the order, explaining that he had done this type of job many times before and generally just made sure the order had a court seal and a judge's signature before proceeding. (Tr. 56-57)

Santangelo further testified that after arriving at the apartment, he explained to Mr. Pacheco that he was here with Person A to retrieve his belongings pursuant to a court order. (Tr. 51) He recounted that Person A showed Pacheco the order and Pacheco waved his hand at it as if he did not want to see it. (Tr. 51, 76) Pacheco then told them that he

did not want them going into the apartment. (Tr. 51) Respondent explained that he decided to enter the apartment with Person A to keep the peace and because he felt there would be recurring issues if Person A was not able to retrieve his belongings that day. (Tr. 62, 74)

According to Respondent Santangelo, he placed his hand with an open palm on the door and opened it, entering the apartment with Person A. (Tr. 52) Person A immediately retrieved prepacked garbage bags of his belongings from the kitchen and then proceed to a back bedroom to retrieve two tables. (Tr. 52-53) Respondent Santangelo did not enter the bedroom. (Tr. 54) Finally, as they were about to leave, Person A stated that he also needed to get a computer. (Tr. 56) Respondent recalled that he asked Pacheco and his nephew if the computer belonged to Person A and they confirmed it did belong to him, after which the officers and Person A left the premises. (Tr. 56)

Respondent Cardenas provided testimony similar to that of his partner. He recounted that Sergeant Tracy-Donato assigned them a "clothes job," which he defined as getting an individual's clothing out of an apartment pursuant to a court order. (Tr. 83) Like Respondent Santangelo, he did not recall the judge's name or case number on the order, and had not photocopied it. (Tr. 90)

Cardenas never stepped inside the apartment, explaining that he did not enter all the way because he did not want to overwhelm the occupants by having two police officers inside. (Tr. 85, 97) He testified that he did hold the door open so that he would not be closed off from his partner at any point. (Tr. 85, 96) He estimated that they were at the apartment for approximately ten minutes. (Tr. 1 00)

Both officers noted in their memo book that they received a "61," which they defined as a precinct assignment or stationhouse job, to go to Pacheco's address. (Tr. 6, 65, 83; Court Exs. 1-2) They did not reference the court order in their respective memo books.

I note preliminarily that the while New York, unlike several other states, does not have an express law establishing "civil standbys" to assist in keeping the peace during the removal of personal belongings from a former residence, New York judges have, under the common law, entered orders allowing individuals the right to return to a former residence with a police escort and enter back into the premises to retrieve personal belongings. *See e.g. L.R. v. C.R.*, 44 Misc.3d 1208(A) (Richmond County 2014); *People v. Carrington*, 12 Misc. 3d 1189(A) (Kings County 2006). *See also Malatesta v. New York State Division of State Police*, 120 F.Supp.2d 235 (N.D.N.Y. 2000)(Court dismissed a 42 U.S.C.S. §§ 1983, 1985 complaint alleging that a Fourth Amendment violation occurred when police entered complainant's property to assist an individual with the repossession of a vehicle noting that, "New York State Police have had a longstanding practice of performing civil standbys to prevent breaches of the peace during private repossessions.") In fact, counsel for both CCRB and Respondents were unsuccessful in their efforts to locate such an order as part of the housing court matter relating to Pacheco and Person A. However, CCRB counsel represented that he was informed by Housing Court that, "they could find no record of any litigation or any order but that does not exclude the possibility that one exists." (Tr. 40)

Having carefully considered all the evidence, I credit Respondents' testimony that they were authorized to accompany Person A. Both officers testified consistent with one another in a straightforward manner and were not shown to have any bias against Mr. Pacheco. Both Respondents credibly testified that they went to Pacheco's home on the order of Sergeant Tracy-Donato who showed them a court order that listed Person A's belongings and allowed Person A to be escorted by police to retrieve those belongings. Not only did Respondents testify that a supervisor showed them a signed court order, they also testified that Person A tried to present the order to Pacheco. Pacheco himself testified that Person A was holding a white sheet that listed his belongings but that he did not examine it. His nephew confirmed the same. Although the court order could not be located, the tribunal believes that it is more likely than not that the white sheet Person A was holding was in fact the court order Respondent's had seen and Respondent's supervisor had reviewed prior to assigning them to escort duty.

Accordingly, I find that CCRB fell short of proving by a preponderance of the credible evidence that Respondents, in escorting Person A as he collected his belongings, acted with the willful intent or negligence necessary to establish misconduct in a disciplinary proceeding. *Ryan v. N.Y. State Liquor Authority*, 273 A.D. 576 (3d Dep't 1948). As such, Respondents are found Not Guilty of the subject charges.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trial

APPROVED

OCT 15 2015



WILLIAM J. BRATTON
POLICE COMMISSIONER